Supreme Court, U.S.
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No. : 08-492

In the
Supreme Court of the United States

LEONARD WILLIAM HOUSTON a/k/a
Leonard W. Houston,

Petitioner,

-v.-

AAMES FUNDING CORPORATION d/b/a
AAMES HOME LOAN c/o
AMERICA'S SERVICING COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LEONARD WILLIAM HOUSTON a/k/a
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QUESTIONS PRESENTED

The Plaintiff "bears the burden of demonstrating standing and must plead its components with specificity." And thus, the minimum constitutional requirements for standing are: proof of injury in fact, causation, and redressability. In addition, "Plaintiff must be a proper proponent to vindicate the rights asserted," in its judicial foreclosure complaint and all subsequent proceedings involving securitized mortgage loans. The following questions are presented:

1. Whether the Plaintiff satisfies its burden of demonstrating standing at the time of filing of its judicial mortgage foreclosure complaint pursuant to Article III of the United States Constitution by appropriately document the chain of ownership with respect to the securitized mortgage loan at the time it filed suit on those negotiable instruments.

2. Whether the Plaintiff, not being an assignee, successor-in-interest or a trustee of the securitization trust of said mortgage loan at issue, was the proper proponent in this judicial mortgage foreclosure proceeding to vindicate the rights asserted to satisfy the requirements of Article III of the United States Constitution as of the date the foreclosure action was filed.

3. Whether the lower Court abandoned its independent obligations to preserve the judicial integrity of the state court jurisdiction by failing to consider the principles of "real party in interest" with respect to the securitized mortgage loan at

issue, whereas the subsequent action was brought not in the name of the securitization trustee in these proceedings, and thus failed to examine the provision under Rule 17(a) of the Federal Rules of Civil Procedure that was appropriately raised by Defendant under the applicable provisions of N.Y. Civil Practice Law and Rules pursuant to the filing of said judicial mortgage foreclosure complaint.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

U.S. Bank National Association, As Trustee
For Credit Suisse First Boston HEAT 2004-6

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IN THE
SUPREME COURT OF THE UNITED STATES

LEONARD WILLIAM HOUSTON a/k/a Leonard W. Houston,

Petitioner,

-against-

AAMES FUNDING CORPORATION d/b/a AAMES HOME LOAN c/o AMERICA'S SERVICING COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays and petition this Court for a writ of certiorari issue to review the Judgment of the Supreme Court of the State of New York, entered on August 15, 2007.

OPINIONS BELOW

The Opinion of the Supreme Court of State of New York Appellate Division of the Second Judicial Department is reported as *Aames Funding Corporation v. Houston*, 44 A.D.3d 692, and appears in Pet. Appendix C [1], of this Petition. The copy of the Order on Motion for leave to appeal was denied by the Court of Appeals of the State of New York, and a subsequent copy of the Order for reargument of Motion for leave to appeal, were also denied by the Court of Appeals of the State of New York, are

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[1] Numbers follow by letter "a" refer to pages in the bound Appendix submitted with this Petition.

herein reproduced and appears in the Pet. Appendix A and B, respectively.

BASIS FOR JURISDICTION

The New York Supreme Court's Judgment of Foreclosure and Sale was duly entered by Court, Orange County on August 15, 2007, and thereafter affirmed before the Supreme Court of the State of New York, Appellate Division of Second Judicial Department, and on Appellant's motion for rehearing or in the alternative, for leave to appeal to the Court of Appeals for the State of New York, and thereafter by Decision and Order was denied on December 21, 2007. (Pet. Appendix. D)

This Court has jurisdiction to review the Summary Judgment and final Judgment of Foreclosure and Sale of the Supreme Court of the State of New York, and subsequent Orders entered without an opinion that denied leave to appeal by the Court of Appeals of the State of New York. Therefore, jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Rule 14(f) of the Supreme Court Rules, the citation of relevant constitutional, and statutory provisions involved are listed here.

Article III of the United States Constitution provides in pertinent part: ... "The judicial Power of the United States shall be invested.... and in such

inferior Courts...extend to all Cases in Law and Equity under this Constitution ... - to Controversies ... "

Fifth and Fourteenth Amendments of the United States Constitution provides in pertinent part: "nor * * * deprive any person of life, liberty, or property, without due process of law; ... nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Nature of Case-

This is an action for equitable relief to foreclose a real property mortgage loan pursuant to Real Property Actions and Proceedings Law ("RPAPL"), Section 1301 et seq., on a One Family Dwelling, being described as a One Family Condominium Town House, located at 148 Deer Court Drive, Middletown, New York 10940, arising out of an alleged default under said documents entitled, "Mortgage," and "Adjustable Rate Note" (i.e., Loan/Appl.: 0001004225), that was duly executed by the named Borrower, Leonard W. Houston, as sole Mortgagor, dated May 29, 2004, to the named Lender, Aames Funding Corporation d/b/a Aames Home Loan, as Mortgagee, and thereafter assigned to US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2004-6, as trustee of he securitization trust into which the adjustable rate mortgage loan of said borrower had been sold on June 4, 2004.

The Plaintiff-Respondent, Aames Funding Corporation d/b/a Aames Home Loan had assigned said Mortgage and Adjustable Rate Note, bearing then *10.18 %* per centum per annum, of the named Defendant, Leonard W. Houston, dated and duly executed under oath on June 4, 2004, and all indebtedness secured thereby, which act occurred more than one (1) year and six (6) months ago.

Thus, Recordation of said mortgage lien that was validly assigned to US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2004-6, as trustee of the securitization trust into which the adjustable rate mortgage loan of said Borrower (Defendant herein), did not occur in fact until *January 6, 2006*, the same recorded in Book of Mortgages 12043, at Page 0631, as an undisputed material fact in these judicial foreclosure proceedings.

State Court Procedural History –

On January 20, 2005, that pursuant to Article 13 Real Property Actions and Proceedings Law, ("RPAPL"), Section 1301, *et seq.*, a Complaint of Plaintiff, Aames Funding Corporation d/b/a Aames Home Loan C/O America's Servicing Company, the same, Verified by Kevin J. Kane, Esq., Associate of the firm, Steven J. Baum, P.C. Attorney for Plaintiff, with Notice of Pendency of same date all filed in the Supreme Court, County of Orange, bearing assigned Index No. 430/05.

Thereafter, said Plaintiff caused substituted service of process made in this proceeding on the

named Defendant, Leonard W. Houston, on January 28,2005, of which said Defendant filed a "Notice of Appearance, Answer and Demand for Verified Bill of Particulars and served and in this entitled proceedings on or about February 15,2005, and were filed therein.

On April 14, 2005, the Plaintiff by and through their Attorney, Kevin J. Kane, Esq., an Associate of Steven J. Baum, P.C. Attorney for Plaintiff, filed its Motion for Summary Judgment and Order of Reference therein, as pursuant to CPLR §§ 3212 and 3211, seeking *inter alia*, an Order dismissing the filed Answers (Verified) of the named Defendants, Leonard W. Houston and Lucille Houston, and for such other related relief to be entered in favor of said Plaintiff against said named defendants.

On May 9, 2005, the Supreme Court [OWEN, J.S.C.] entered an Order in favor of the Plaintiff, Aames Funding Corporation *d/b/a* Aames Home Loan C/O America's Servicing Company, and against the named Defendant, Leonard W. Houston and Lucille Houston, granting Summary Judgment and Order of Reference, with a Short Form Order [Interlocutory] that dismissed said named Defendants' *pro-se* Answers and Affirmative Defenses as to the existence of triable issues of fact to this proceeding; and further held that the named Defendant, Leonard W. Houston's Cross Motion is moot.

On February 22, 2006, the Supreme Court entered a Short Form Order which denied the entitled Motion of the named Defendant, Leonard W.

Houston for an Order pursuant to CPLR § 5015(a)(3), with the Affidavit in support. Which asserted that the Plaintiff, Aames Funding Corporation *d/b/a* Aames Home Loan C/O America's Servicing Company had procured an Order of said Court pursuant to CPLR §§ 3211 and 3212, for Summary Judgment and Order of Reference by acts of Fraud, Misrepresentation, or Misconduct in this mortgage foreclosure proceeding. By its acts of fraudulent concealment and suppression of an indisputable material fact, that was presented upon Judicial Notice to this Court- That Aames Funding Corporation *d/b/a* Aames Home Loan, as original Mortgagee, was and is legally bound to disclose that they had *assigned* said mortgage lien and all indebtedness secured thereby. And which ac' had occurred more than one (1) year and six (6) months ago, by reason of the fact, the valid Assignment of Mortgage to US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2004-6, trustee of the securitization trust of which the adjustable rate mortgage loan of said Borrower (Defendant herein), had been validly assigned in the absence of an appropriate substitution of parties as was therein stated by said Supreme Court. [*see*, CPLR § 1021]

Thus, the Supreme Court (OWEN, J.S.C.) rendered its decision and had docketed the Judgment of Foreclosure and Sale dated July 26, 2006, and was duly entered by the Clerk of the Court on August 15, 2006, with a Short Form Order, and the appeal was taken there from that was adequately presented upon the aforestated facts and substantive law therein.

That the Interlocutory Orders entered by the Supreme Court (OWEN, J.S.C.) in this judicial mortgage foreclosure proceedings were submitted by the Defendants, Leonard W. Houston and Lucille Houston, on Appeal to the Appellate Division: Second Judicial Department as of right [CPLR § 5513] the same bearing Appellate Division Docket Numbers: 2006-2537 and 2006-02629.

On September 7, 2006, the Appellate Division of the Second Judicial Department on its own motion stated in its Decision and Order, inter alia, "that the Defendants-Appellants' appeals are dismissed, as the Orders on appeal have been superseded by that Court's Judgment entered on August 15, 2006," and further stated "that the issues on the appeals from the orders may be brought up for review on an appeal from the judgment (see *Matter of Aho*, 39 NY2d 241, 248).

On October 9, 2007, the Appellate Division of the Second Judicial Department issued its decision and order, denying the appeal from the Order dated July 26, 2006, and that the final Judgment of Foreclosure and Sale was affirmed, with one bill of costs awarded therein to said plaintiff.

On December 21, 2007, by Decision and Order of said Appellate Court, the Appellant's motion for leave to reargue appeals [*i.e.*, citing," from an Order of the Supreme Court, Orange County, dated July 26, 2006, and a Judgment of the same court entered on August 15, 2006, which were determined by decision and order of said Appellate Court, dated October 9, 2007, or in the alternative, for leave to

appeal to the Court of Appeals from said decision and order of this court] was denied with *$100.00* costs.

On Motion by Appellant, for leave to appeal to the Court of Appeals, from said Appellate Court's Decision and Orders, it was ordered that said motion is denied, entered March 18, 2008, and said type Decision a and Order was so entered on Appellant's subsequent entitled motion for reargument to said Appeals Court, on April 30, 2008. [2]

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[2] ***Federal Court Procedural History –**

That prior to these aforesaid Recordation of said mortgage lien, on November 29,2005, the original Mortgagee, Aames Funding Corporation *d/b/a* Aames Home Loan c/o America's Servicing Company as alleged Secured Creditor, commenced a Non-Adversary proceeding in the United States Bankruptcy Court for the Southern District of New York, against the Debtor, Leonard W. Houston, Defendant herein, by filing document entitled, "Notice of Presentment to Vacate The Automatic Stay," with Application thereof. Thus, seeking an Order of the Bankruptcy Court to vacate the stay imposed under 11 U.S.C. § 362(a) and § 1322(b)(5) of the provisions of the Bankruptcy Code.

This was pursuant to a Voluntary Petition in Bankruptcy (i.e., Bankruptcy Case No. 05-B-37138), by said Debtor, Leonard William Houston a/k/a Leonard W. Houston, Defendant-Appellant herein, with regard to the aforesaid described premises/real property. Which, said Plaintiff-Respondent had attested to the fact under oath, as being the secured Creditor and holder of said Mortgage and Note in the amount of *$144,000.00*, bearing then an Adjustable Rate Interest of *10.18%* per centum per annum.

Thereafter, by an oral and subsequent written Decision and Order of the Bankruptcy Court (MORRIS, Bankruptcy Judge), for the Southern District of New York (Poughkeepsie

Division), entered and dated January 31, 2006, said Bankruptcy Court in the absence of an Evidentiary Hearing, terminated the automatic stay that was imposed pursuant to 11 U.S.C. § 362 (d)(l) of the Bankruptcy Code, as to Movant's lien interest in the property located at 148 Deer Court, Middletown, New York 10940.

Thus, the Debtor-Appellant, Leonard William Houston a/k/a Leonard W. Houston, Defendant-Appellant herein, appeal said Bankruptcy Court's Decision and Order under 28 U.S.C. § 158(a)(b), to the United States District Court for the Southern District of New York [*i.e.*, bearing Civil Docket No. 06-CIV-01752(WCC)]. And thereafter, on April 19, 2006, in the absence of a ruling on the merits of the Debtor's Appeal, it was the written Opinion of the District Court (CONNER, U.S.D.J.), and so held- "In the absence of a timely Notice of Appeal this Court lacks Jurisdiction and Debtor's Appeal is hereby dismissed," and cited in its Conclusion- "For r l of the foregoing reasons, Appellant Leonard William Houston's appeal is dismissed, and thus, a Judgment was entered by the Clerk of the Court accordingly.

On April 28, 2006, the Debtor-Appellant, Leonard William Houston a/k/a Leonard W. Houston filed a Motion entitled, "Notice of Motion For Rehearing," dated April 26, 2006, pursuant to Fed. R. Bankr. P. 8015, to grant a rehearing and reconsideration of said debtor-appellant's appeal in the above cause, and that on rehearing granted, this Court's Opinion dated April 19, 2006, be withdrawn, and that the Order and Judgment entered and dated April 19, 2006, be vacated and set aside, and that this Court enter a new Opinion with Order and reverse of the prior Order of said Bankruptcy Court, entered and dated January 31, 2006, that terminated the automatic stay, and remand with instruction for further proceedings.

On June 7, 2006, said District Court entered and written Opinion and Order, that the debtor's motion for rehearing and reconsideration is denied. Further stated, "However, these issues, which pertain to the merits of the original appeal, were never addressed because this Court found that it did not have jurisdiction to hear the appeal due to

debtor's failure to file a timely appeal [i.e., citing to Fed. R. Bankr. P. 8002(a)]."* * * Therefore, we are compelled to deny his request."

Thereafter, on June 8, 2006, a further Appeal as Amended was taken by the Debtor Appellant, Leonard William Houston a/k/a Leonard W. Houston, to the United States Court of Appeals for the Second Circuit [bearing Docket No. 06-CV-1752-bk] from the aforesaid Final Order and Judgment entered by the United States District Court for the

Southern District of New York on April 19, 2006, and June 7, 2006, respectively.

Thus, on July 19, 2007, said United States Court of Appeals for the Second Circuit entered a Summary Order, which the District Court properly denied Houston's motion for reconsideration and for those reasons [*i.e.*, Fed. R. Bankr. P. 8002(a); also Fed. R. Bankr. P. 9006(a)] and affirmed the Judgment of the District Court. And upon Petition by Leonard William Houston for Rehearing and Rehearing En Bane, dated and filed on July 27, 2007, it was Ordered that said Petition for rehearing is Denied, entered and filed October 23, 2007, with a Mandate issued of the aforesaid Summary Order of this Court, dated November 2, 2007, and so entered and filed on November 8, 2007, in the United States District Court for the Southern District of New York. *Houston v. Aames Funding Corp.*, 240 Fed. Appx. 910, 2007 U.S. App. LEXIS 17166

Thereafter, on January 23, 2008, the Petitioner, Leonard William a/k/a Leonard W. Houston filed a Petition for Writ of Certiorari to the United States Court of Appeals for The Second Circuit, in the Supreme Court of the United States, assigned Case No. 07-879, and by Order in the entitled case, said petition for writ of certiorari was therein denied on March 17, 2008. *Houston v. Aames Funding Corp.*, 2008 U.S. LEXIS 2555 (U.S. Mar. 17, 2008)

REASONS FOR GRANTING THE PETITION

A. This Court should grant certiorari- as the judicial opinion rendered below conflicts with the current District Courts' and State Appellate Courts' rulings and its interpretation applicable to mortgage securitization transactions and assignments of mortgages to securitization trustees, as well as the issue of the true "*party-in-interest*" and statutory "*standing*" at the time foreclosure proceedings are initiated involving securitized mortgage loans -

In this case at bar, US Bank National Association, as Trustee for Credit Suisse of First Boston HEAT 2004-6, trustee of the securitization trust into which the mortgage loan was sold, is the true party in interest as holder of the Borrower's Adjustable Rate Note and Mortgage as of June 4, 2004. The Plaintiff, Aames Funding Corporation d/b/a Aames Home Loan submitted copies to the court of the Adjustable Rate Note and Mortgage, as the *original* lender and as holder, but failed to have described the chain of transfer of said mortgage loan or submitted the aforesaid executed assignment of the mortgage to the securitization trustee at the time that the judicial foreclosure proceedings were initiated- January 20, 2005, and whereas, said duly executed assignment of mortgage was recorded [i.e., January 6, 2006] before the commencement of this mortgage foreclosure action.

Cited federal and state court decisions applicable to mortgage securitization transactions clearly stand

for the proposition that before initiating foreclosure proceedings, trustees and servicers and their counsel are to ensure that (1) "all" documentation required to effect the transfer of the mortgage loan has been properly execute 1 and delivered, (2) that the executed assignment of mortgage has been recorded according to applicable state law, and (3) that the pleadings and accompany documentation to be filed with the court described the chain of transfer of the mortgage loan from the lender to the securitization trustee, this being the applicable procedural requirement.

The lower Court's Order and Decision that are the subject of this Petition for a Writ of Certiorari were rendered by the Court of Appeals of the State of New York, for the Supreme Court of the State of New York, Appellate Division of the Second Judicial Department that affirmed its decision.

Petitioner, Leonard W. Houston respectfully requests the Court to grant certiorari, vacating the lower Court's Judgment and Order, dated August 15, 2007, as affirmed by said Appellate Supreme Court and the Court of Appeals of the State of New York without opinion in favor of the Respondent, Aames Funding Corporation d/b/a Aames Home Loan. As they has not satisfied its burden, inter alia, that clearly demonstrated that it lacked statutory "*standing*" at the time of filing its Verified Complaint on *January 20, 2005*. As one Circuit Court stated, "Standing is determined at the time the complaint is filed." (Citing, *Cleveland Branch, N.A.A.C.P. v. City of Parma*, 263 F.3d 513, at 525 (6th Cir. 2001) And same, not being the "*real party-*

in-interest" in this judicial mortgage foreclosure action commenced and regulated pursuant to statute in New York under provisions of Article 13 of Real Property Actions and Proceedings Law ("RPAPL"), §§ 1301 to 1372, as against said named Defendant-Appellant.

As the lower Court misapprehended or overlooked, among other things, the controlling principle and substantive points of law and procedure with respect to securitized mortgage loans/transactions, and trustees of the securitization trust into which the mortgage loan had been sold, and in this case has not only created confusion and discord in the law as to the fluidity of the secondary mortgage market - private and public of this state, but it is very much in error.

The gravity of these constitutional and statutory errors and their far-reaching effects necessitate this Court's intervention with respect to the current issue on *"securitized mortgage loans"* and Trustees of the securitization trusts into which the mortgage loans had been sold and pursuant to a case at bar, the commencement of a judicial mortgage foreclosure proceedings, whereas, in such Complaint identifies the *original* lending institution (mortgagee) as the named plaintiff in this case.

Petitioner, in support of its entitled Petition provides this Court now with a unique fortuity to clarify the statutory law on said type residential mortgage loans and respectfully asks this Court of its judicial interpretation on said issues. *Friends of*

the Earth, Inc. v. Laidlaw Environmental Services (TOC) Inc. 528 U.S. 167, at 18[-181 (2000)

Thus, said judicial analysis was rendered in a decided case of mortgage foreclosure proceedings involving "*securitized mortgage loans*," and so held at the United States District Court for the Eastern District of Ohio (Christopher A. Boyko, Judge.), that clearly rendered a written Opinion and Order - *In re Foreclosure Cases*) Case No.1 :07-CV-2282-CAB: "To show standing ... in a foreclosure action, the plaintiff must show that it is the holder of the note and the mortgage at the time the complaint was filed." And which the Court further cited in its Law and Analysis: "reviewing the principles of "real party in interest" rule and examined Fed. R. Civ. P.17- "Parties Plaintiff and Defendant; Capacity."

Thus, the Ohio District Court's Order after a thorough review of all relevant law, therefore, which in all respects, is clearly applicable in said Appellant's case. The Ohio District Court justly stated, "Moreover, this Court is obligated to carefully scrutinize all filings and pleadings in foreclosure actions, since the unique nature of real property requires contracts and transactions concerning real property to be in writing." Furthermore, the plaintiff must be a proper proponent, and the action a proper vehicle to vindicate the rights asserted. And to satisfy the requirements of Article III of the United States Constitution, the plaintiff must show he has *personally suffered some actual injury* as a result of the illegal conduct of the defendant. (Emphasis added) (Citations omitted) *In re Foreclosures Cases*,

No. 07-cv-2282, 2007 WL 3232430 (N.D., Ohio Oct. 31, 2007).

As discussed in one of the plaintiffs responses to the Court's October 10, 2007 order, there is some authority that allows for the assignment of a note and mortgage to a party who has already commenced foreclosure proceedings *Bank of New York v. Stuart*, 2007 Ohio 1483 (Ohio Ct. App. 2007), the original holder of the note and mortgage was Countywide Home Loans. On *May 16, 2005*, the Bank of New York, as trustee of the securitization trust into which the mortgage loan had been sold, filed a complaint for foreclosure and other relief. The mortgagor claimed that Bank of New York was not the assignee of the mortgage. In its motion for summary judgment, Bank of New York included the assignment of the mortgage that was dated *October 19, 2005*. On appeal, the court found that the filing of the assignment before judgment was sufficient to alert the court and mortgagor that Bank of New York was the real party in interest.

And in another Ohio Court of Appeals case, *Washington Mutual Bank, F.A. v. Green*, 156 Ohio App.3d 461 (Ohio Ct. App.2004), the court found that in order to survive a motion to dismiss, the plaintiff and assignee of a mortgage only has to set forth in the complaint that it was the owner and holder of the promissory note and mortgage. Thus, as a result of the aforestated decision cited in *In re Foreclosures Cases, supra*, it would have been prudent for those seeking to foreclosure on a mortgage loan (1) to obtain and record an assignment of the mortgage and (2) before a mortgage foreclosure actions is

commenced. (See, *In re Foreclosure Cases*, No. 3:07-cv-043 et al., 2007 WL 4056586, *3 (S.D. Ohio Nov. 15, 2007) (hereinafter "Foreclosure Actions"), which Judge Thomas Rose, of the Southern District Court of Ohio, gave plaintiff in 27 foreclosure cases 30 days to present certain evidence or have their cases dismissed, as said assignments were executed *before* their complaints were filed. Further, in another Appellate Court case, *Bankers Trust Co. of California, NA. v. Vaneck*, 899 A.2d 41-43 (Conn. App. Ct. 2006)(although the issue was not properly before the appellate court, the trial court found the plaintiff had standing where it was the holder of the *mortgage note* before commencement of the case, but the *assignment* of the mortgage and recording occurred after commencement); see also, *Countrywide Home Loans, Inc. v. Brown*, 223 Fed. Appx. 13, 13 (2nd Cir. 2007) (unpublished opinion) (affirming lower's court's holding that foreclosure can proceed where assignment of mortgage was not documented in writing until after the case was commenced)

As one New York Supreme Court held, ... "only the owner of the note and mortgage at the time of the commencement of a foreclosure action may properly prosecute said action." Further stated, "To state a cognizable claim sounding in foreclosure, the complaint must, *inter alia*, allegations regarding the plaintiff's ownership interest in the note and mortgage which is the subject of the proceeding." *Lasalle Bank Natl. Assn. v. Lamy*, 2006 NY Slip Op 51534(U)[12 Misc. 3d 1191(A)] Further, a plaintiff seeking to foreclose upon a mortgage must establish that it has *legal* and *equitable interest* in the

mortgage and underlying debt. (see, *Katz v. East-Ville Realty Co.*, 249 A.D.2d 243[1998]; *Kluge v. Fugazy*, 145 A.D.2d 537[1988] also, *First Nat Assn. v. Meisels*, 234 A.D.2d 414[1996]

As one Ohio District Judge (Kathleen M. O'Malley, Judge.) had similarly stated in its Order in another securitized mortgage foreclosure case, "* * * the plaintiff did not "appropriately document the chain of ownership to demonstrate its legal status vis-a-vis the items at the time it files suit on those items." In re Foreclosure Actions, No. 07-cv-1007, slip op. (N.D. Ohio Nov. 14, 2007). "In other words, a foreclosure plaintiff must provide documentation that it is the owner and holder of the note and mortgage *as of the date the foreclosure action is filed.*" (Emphasis in original)

Thus, the Plaintiff-Respondent, Aames Funding Corporation d/b/a Aames Home Loan, as original Mortgagee and Assignor, has not satisfied its burden of demonstrating that it had standing at the time of the filing of its judicial mortgage foreclosure Complaint (Verified), pursuant to Article 13 Real Property Actions and Proceedings Law, with respect to the assigned "Adjustable Rate Mortgage and Note" to US Bank National Association as Trustee for Credit Suisse First Boston HEAT 2004-6, trustee of the securitization trust into which the mortgage loan had been sold on *June 4, 2004.*

B. Review is needed to ensure uniformity on an issue of exceptional national importance the lower Court's error and misapprehended the statutory construction

provision's language of an Assignment of Mortgage--

In this case, which the Defendant, Leonard W. Houston presented probative evidence of the Assignor's [Aames Funding Corporation d/b/a Aames Home Loan] intent to surrender control of the Adjustable Rate Note bearing 10.8% per cent per annum and Mortgage, and therefore the Assignee [US Bank National Association, as Trustee For Credit Suisse First Boston HEAT 2004-6] as trustee of the securitization trust into which the mortgage loan had been sold, and *not* the Assignor has standing to file this judicial mortgage foreclosure action as commenced by said Plaintiff pursuant to RPAPL § 1301 et seq., since January 20, 2005. (See, RPL 418)[3]

Importantly, it was therein cited by the Court- *In Re Foreclosure Cases*, No.1 :07-cv-02282-CAB, 2007 WL 3232420 (N.D. Ohio Oct. 31, 2007), that rejected the plaintiffs argument that the lender had simply followed common industry practice, stating: "The institution seem to adopt the attitude that since they have been doing this for so long, unchallenged, this

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[3] Pursuant to N.Y. Real Property Law (RPL), section 418- *Assignment of mortgage, lease, or other lien or charge*: The holder of any mortgage, * * *, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof: and upon such assignment being filed in the office of the registrar. * * *.And under General Obligations Law (GOL), section 5-1107- *Written assignment*: An assignment shall not be denied the effect of irrevocably transferring the assignor's rights because of the absence of consideration, if such assignment is in writing and signed by the assignor, or his agent.

practice equates with legal compliance Finally put to the test, their weak legal arguments compel the Court to stop them at the gate."

Thus, in a judicial decision rendered on this issue in a New York State Appellate Court's case- *Deutsche Bank National Trust Company v. Castellanos* ("DB"), 2007 NY Slip Op. 50978(U), 2007 WL 1378059, said Court *denied*, without prejudice, an application for a judgment of foreclosure and sale, since the Plaintiff, having assigned the note and mortgage during the pendency of the Action, lacked standing to proceed. Further, the Court indicated in its decision, would on *motion* allow the Assignee to be substituted as the plaintiff [CPLR §1021].

Therefore, the assignment of a mortgagee's interest is subject to the same rules affecting any conveyance of real property or an interest. Thus, a mortgagee must have the legal capacity to make the assignment. There must also be consideration for the assignment. The mortgage must be delivered in order to effected an assignment and must be made to the original mortgagor to bind that person to the assignment. Likewise, an assignment of a mortgage should be recorded under section 259 of the NY Real Property Law. (App. 25a - 29a)

And as a Connecticut Court of Appeals has held that the foreclosure judgment be vacated and the case is remanded with direction to render judgment dismissing the action cited in captioned case - *Fleet National Bank v. Nazareth*, 818 A.2d 69, a mortgage holder may not foreclose absent evidence of ownership of the underlying note, further citing "We

begin our analysis by underscoring that a party must have standing to assert a claim in order for the court to have subject matter jurisdiction over the claim."...Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a *legal* or *equitable right, title or interest* in the subject matter of the controversy..." (Emphasis added)

It should be noted that, notwithstanding the written decision in *In re Foreclosures Cases*, Case No. 07-CV-2282; 2007 WL 3232420 (N.D. Ohio Oct. 31, 2007)[4] there is ample law under the Uniform Commercial Code that supports the contention that the owner of a promissory note should be recognized as the owner of the related mortgage. See U.C.C. §§ 9-308(e), 9-203(g), 9-109(a)(3), 9-102(a)(72)(D). Therefore, unless the parties agree otherwise, transfer of the promissory note also transfers the mortgage. Restatement (Third) of Property (Mortgages) § 5.4, comment b. (See, *New Milford Savings Bank v. Jajer*, 244 Conn. 251, 266; 708 A.2d

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[4] In a separate ruling" Ohio District Court (Thomas M. Rose, J.) also held that the foreclosing plaintiff must be the holder of both the note and mortgage at the time the complaint is filed. (*In re Foreclosure Cases* 3:07CV043 (S.D. Ohio, Nov. 15, 2007). And in another mortgage foreclosure case, a decision was rendered by a Ohio state court – *Wells Fargo Bank v. Byrd*, Case No. A0700643 (Hamilton Cty, C.P. Jan. 23, 2007) the Court (Steven E. Martin, J.) ruled that the bank did not have standing ["real party in interest' rule] to bring the case when it filed the lawsuit.

1378 (1998): "The statute codified the common law principle of long standing that "the mortgage follows the note," pursuant to which only the rightful owner of the note has the right to enforce the mortgage.")

Moreover, the Court went on to say in, "*Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.S.2d 801, 812; 766 N.Y.S.2d 654 (2003), cert denied 540 U.S. 1017 (2003), declared that "*standing to sue is critical to the proper functioning of the judicial system. It is a threshold issue. If standing is denied, the pathway to the courthouse is blocked. The plaintiff who has standing, however, may cross the threshold and seek judicial redress.*" and instructs citing, Professor David Siegel, in NY Prac, § 136, at 232 [4th ed] * * * (2) a plaintiff found to lack "standing" is not involved in a controversy; and (3) the courts therefore have no jurisdiction of the case when such a plaintiff purports to bring it.

Further citing, "*Campaign v. Barba*, 23 A.D.2d 327: that *"[t]o establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and the mortgage note, ownership of the mortgage and the defendant's default in payment* [Emphasis added in original]."

And thereby the New York State Appellate Court concluded in *Deutsche Bank Natl. Trust Co. v. Castellanos, supra, "If Deutsche Bank moves to substitute assignee MTGLO Investors L.P. as plaintiff, pursuant to CPLR § 1021, and no other material facts change, the Court will grant the substitution of plaintiff to MTGLO Investors L.P.,*

which will allow the proper mortgagee, the one with standing to receive a judgment of foreclosure and sale. (Emphasis in original) *East Coast Properties v. Galang*, 308 A.D.2d 431,765 N.Y.S.2d 46 (2d Dept 2003); *Lincoln Savings Bank, FSB v. Wynn*, 7 A.D.3d 760, 776 N.Y.S.2d 908 (2d Dept. 2004); CPLR § 1018; GOL § 13-101.

And wherefore, in *Caprer v. Nassbaum*, 36 A.D.3d 176, 181 (2nd Dept. 2006), the Court held that "*standing to sue requires an interest in the claim at issue in the lawsuit that the law will recognize as sufficient predicate for determining the issue at the litigant's request.*" (Emphasis in original, *Deutsche Bank Natl. Trust Co. v. Castellanos, supra.*) If a plaintiff lacks standing to sue, the plaintiff may not proceed in the action. *Stark v. Goldberg*, 297 A.D.2d 203 (15t Dept. 2002). Further, while standing[5] requires an inquiry into whether the litigant has "an interest in the claim at issue in the lawsuit that the law will recognize as sufficient predicate for determining the issue at the litigant's request" (*Caprer v. Nassbaum, supra*)

Thus, as one Court has held, "Without both capacity and standing, a party lacks authority to sue." *Matter of Graziano v. County of Albany*, 3

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[5] A determinative issue in this case on appeal is whether a defense based on lack of *standing* is more akin to the defense that the plaintiff "has not the legal capacity to sue," as set forth in CPLR 3211(a)(3), or to the non-waivable defense that the court lacks subject matter jurisdiction, as set forth in CPLR 3211 (a)(2). And given the facts standing and capacity to sue are related, but distinguishable, legal concepts (see, *Silver v. Pataki*, 96 N.Y. 2d 532,537)

N.Y.3d 475,479, 787 N.Y.2d 689 Further, as explained by the Court of Appeals, "Whether a person seeking relief is a proper party to request an adjudication is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation." Matter of *Dairylea Coop v. Walkley*, 38 N.Y.2d 6, at 9, 377 N.Y.S.2d 451. And, the Court of Appeals has defined the standard by which standing is measured, explaining that a plaintiff, in order to have standing in a particular dispute, must demonstrate an injury in fact that falls within the relevant zone of interests sought to be protected by law. (see, *Matter of Fritz v. Huntington Hosp.*, 39 N.Y.2d 339, at 346, 384 N.Y.S.2d 92.).

C. The lower Court erred on the substantive law and *not* concluding as a matter of law the statutory standard in this case at bar, as to whom is the true "*real party in interest*"-

Upon the aforestated stated factual and procedural background, that the valid Assignment of a Note and Mortgage, the Assignor's claim against a Mortgagor passed to its Assignee, and Assignor is no longer the "*real party-in-interest*" and retained no rights to pursue a claim against the Mortgagor, and clearly absent to cure this defect by and Order of *ratification* or *substitution* or *joinder*. CPLR §§1018 and 1021, prior to securing said Summary Judgment and Judgment of Foreclosure and Sale.[6] (App. 8a-14a and 18a-21a)

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[6] As the lower state Court (OWEN, Justice) clearly admonished said Plaintiffs Attorney in its Foot Note- nl: "*Plaintiff should of*

As a procedural guide under the Federal Law [Fed. R.Civ.P.17(a)], it governs both the determination of a party's capacity to sue and be sued and his or her as the real party in interest. The "real party in interest" principle requires that an action "be brought in the name of the party who possess the substantive right being statutory asserted under the applicable substantive law of that state. [*see also*, Fed. R. Civ. P. 25 (c)].

It is the general rule, arguably mandated by Article III of the Constitution, is that only persons with particularized harms have standing to commence a lawsuit. Such a person "must allege an injury to himself that is distinct and palpable. "*Warth v. Seldin*, 422 U.S. 490, 501 (1975) (cited in the case - *Whitmore v. Arkansas*, 495 U.S. 149 (1990).[7] Furthermore, he must show that he personally has suffered some actual or threatened injury. Sierra Club v. Morton, 504 U.S. 727 (1972). Since the Assignment of Mortgage of the Borrower,

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course, seek an appropriate substitution of parties."(Emphases added)

[7] See, *Valley Forge Christian College v. Americans United For Separation of Church & S, Inc.*, 454 U.S. 464, at 471- 476 (1982) - * * * "Article III, of course, gives the federal courts jurisdiction over only "cases and controversies," and the doctrine of standing serves to identify those disputes which are appropriately resolved through the judicial process. The litigant must clearly and specifically set forth facts sufficient to satisfy these Art III standing requirements. * * * .(cited in *Whitmore v. Arkansas, supra.*

Suffice to say, as to the Petitioner's case at bar, that such reasoning underlying such decision is that where there is no aggrieved party, there is no genuine controversy, and where there is no genuine controversy, there is no subject matter jurisdiction (see, *Security Pac, Natl. Bank v. Evans*, 31 A.D.3d 278, at 284 (2006) [Catterson, J., dissenting] appeal dismissed, 8 N.Y.3d 837 [2007])

Leonard W. Houston (Defendant-Appellant herein), June 4, 2004, by Aames Funding Corporation d/b/a Aames Home Loan, has not even alleged any such particularized harm to themselves, much less demonstrated it as the Assignor, of said *securitized* mortgage loan from that period of assignment.

D. The lower Court's collective-action reasoning and affirmance are contrary and erred under the statutory language of the Assignment of Mortgage and Judicial Foreclosure under Article 13 of Real Property Actions and Proceedings Law-

The Assignee [*i.e.*, US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2004-6] as trustee of the securitization trust into which the mortgage loan had been sold, the Adjustable Rate Note bearing then 10.18% per centum per annum and Mortgage held as collateral security is the proper party to commenced foreclosure of the mortgage lien, even though the Assignor improperly retained possession of said Adjustable Rate Note and Mortgage, and thus the valid Assignment of a Mortgage duly executed constituted constructive delivery of said negotiable documents. (App. 15a-17a)

It is clear that the Plaintiff, Aames Funding Corporation a/b/a Aames Home Loan lacks standing to sue since June 4,2004, when it assigned its ownership of the Houston's Mortgage and Note to the US Bank National Association as Trustee for First Boston HEAT 2004-6, as trustee of the securitization trust. (App. 25a - 29a)

Therefore, said Plaintiff did not have the requisite factual predicate for standing as of said date (i.e., June 4, 2004) to enforce the Adjustable Rate Note and Mortgage, and further there was a fatal discrepancy in the identification of the true party in interest as per filed Complaint [Verified], and subsequent documents attached thereto, in view of the fact of a valid statutory "Assignment," even though the Petitioner-Defendant presented admissible evidence that asserted on the issue of "*standing*" and "*real party in interest*" *not* to be the named Plaintiff, Aames Funding Corporation d/b/a Aames Home Loan, et al. (App. 30a - 41a)

Of which the lower Court (OWEN Justice) addressed theses claims in its Short Form Order, and thereafter stated, inter alia, "*It appears from the papers that this assignment was not recorded until January 6, 2006, well after commencement of this action and granting of the challenged order* [*i. e.*, May 11, 2005]". Further stated, "*As plaintiff was the record owner of the mortgage throughout these proceedings, there is no jurisdictional defect.*" (App. 15a - 21a).

The same affirmed by Decision and Order of the Appellate Court of the State of New York, and by subsequent Order of the Court of Appeals of State of New York, rendered without opinion. (App. 3a - 6a)

Even thou, one Appellate Court had stated that the statute codifies the common law principle of long standing that- "*the mortgage follows the note,* " pursuant to which only the rightful owner of the note has the right to enforce the mortgage. *New Milford*

Savings Bank v. Jajer, 244 Conn. 251,266, 708 A.2d 1378 (1998); Restatement (Third) Property, Mortgages § 5.4, p.380 (1997) [8]

E. The lower Court erred in not vacating the Judgment of Foreclosure Judgment and Sale pursuant to CPLR § 5015(a)(3), which the non-ruling deprived Defendant's substantive "*due process*" rights as therein afforded by the U.S. Constitution-

Said statutory provision authorizes the court to relieve an aggrieved party [Defendant-Appellant] from a judgment upon the ground of "*fraud, misrepresentation or other misconduct of an adverse party*" [i.e., Aames Funding Corporation d/b/a Aames Home Loan C/O America's Servicing Company] the same was evident by the actions of the Plaintiff, based upon their expressed material misrepresentation of the fact, as their sworn averment being the "sole equitable holder" of the Adjustable Rate Note and Mortgage of said Mortgagor, Leonard W. Houston, Defendant-Appellant herein.

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[8] That the number of times that a given note and mortgage may be sold, resold, repurchased, or securitized, the practice of some mortgage loan servicers has been to commence a foreclosure action in the name of the originator, even though the loan has been sold and transferred with an endorsement in blank. Even though, decided cases has held and required that a plaintiff show documentary proof of ownership of the note and mortgage at the commencement of the mortgage foreclosure action and "any applicable assignments."

And consequently, the documents it attached to its judicial mortgage foreclosure Complaint, failed show that other entity, US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2004-6, as trustee of the securitization trust into which the said mortgage loan had been sold was the holder and owner of the Note and Mortgage of the Borrower, Leonard W. Houston.

Accordingly, it appears that on January 20, 2005, said judicial mortgage foreclosure Complaint (Verified) and Affirmations submitted thereto, contained false statements and that the veracity of the affiant(s) and/or Plaintiff herein are seriously in doubt, and warrants further concern regarding the veracity of the Plaintiff in said proceedings. Further, the law holds a plaintiff "accountable for the act of omissions of [its] chosen counsel," *Pioneer Investment Services Co. v. Brunswick Associates Ltd Partnership*, 507 U.S. 380,397, 113 S.Ct. 1489 (1993).

CONCLUSION

For all the foregoing reasons. the petition for writ of certiorari should be granted.

Dated: July 1, 2008

Respectfully submitted,

LEONARD WILLIAM HOUSTON
a/k/a Leonard W. Houston.
pro-se Petitioner
148 Deer Court
Middletown. New York 10940-6867
(845) 343-8923
Facsimile: (845) 342-3114

State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION March 18, 2008

2-10 Mo. No. 59
Aames Funding Corporation,
Respondent,

v.

Leonard W. Houston,
Appellant,

et. al.,
Defendants.

Motion for leave to appeal denied.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eighteenth day of March 2008

Present, Judith S. Kaye, *Chief Judge, presiding*

2-10 Mo. No 59
Aames Funding Corporation, &c,
Respondent,

v.

Leonard W. Houston,
Appellant,

et al.

Defendants.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Stuart M. Cohen

Stuart M. Cohen
Clerk of the Court

State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION June 25, 2008

2-10 Mo. No. 403
Aames Funding Corporation,
Respondent,

v.

Leonard W. Houston,
Appellant,

et. al.,
Defendants.

Motion for reargument of motion for leave to appeal denied.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-fifth day of June 2008

Present, Judith S. Kaye, *Chief Judge, presiding*

2-10 Mo. No 403
Aames Funding Corporation, &c,
Respondent,

v.

Leonard W. Houston,
Appellant,

et al.

Defendants.

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Stuart M. Cohen

Stuart M. Cohen
Clerk of the Court

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D16495
C/cb

AD 3d

Submitted, September 14, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCI
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-08953
2007-08894
Aames Funding Corporation, etc., respondent, v. Leonard W. Houston, et al., appellants, et al., defendants.
(Index No. 430/05)

Leonard W. Houston, Middletown, N.Y., appellant pro se.

Lucille Houston, Middletown, N.Y., appellant pro se.

Steven J. Baum, P.C., Buffalo, N.Y. (Charles D.J. Case of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Leonard W. Houston and Lucille Houston separately appeal from (1) an order of the Supreme Court, Orange County (Owen, J.), dated July 26, 2006, which, inter alia, granted the plaintiffs motion for a judgment of foreclosure and sale based upon, among other things, a prior order of the same court dated May 11, 2005, inter alia, granting the plaintiffs

motion for summary judgment, and (2) a judgment of foreclosure and sale of the same court entered August 15, 2006.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

The appeal from the intermediate order must be dismissed because the right of direct appeal there from terminated with the entry of judgment in the action (see *Matter of Aho*, 39 NY2d 241,248). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (CPLR 5501[a][1]).

"[I]n an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default" (*Republic Natl. Bank of N. Y. v. O'Kane*, 308 AD2d482, 482; see *Village Bank v. Wild Oaks Holding*, 196 AD2d 812). The plaintiff produced the note and mortgage executed by the defendant Leonard W. Houston (hereinafter Houston) as well as evidence of Houston's nonpayment. Accordingly, it was incumbent upon Houston and the defendant Lucille Houston (hereinafter the defendants), who holds title to the subject premises with Houston, to produce

evidentiary proof in admissible form sufficient to require a trial of their defenses (see *State Bank of Albany v Fioravanti*, 51 NY2d 638,647; *Federal Home Loan Mtge. Corp. v Karastathis*, 237 AD2d 558; *Village Bank v Wild Oaks Holding*, 196 AD2d 812). The defendants failed to do so. Therefore, the Supreme Court properly granted the plaintiff's motion for summary judgment and its subsequent motion for a judgment of foreclosure and sale.

The defendants' remaining contentions are without merit.

SCHMIDT, J.P., SANTUCCI, FLORIO and DILLON, JJ., concur.

ENTER:

James Edward Pelzer

James Edward Pelzer
Clerk of the Court

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M63776
E/sl

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCI
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-08953
2007-08894
Aames Funding Corporation, etc., respondent, v. Leonard W. Houston, et al., appellants, et al., defendants.
(Index No. 430/05)

Motion by the appellant Leonard Houston for leave to reargue appeals from an order of the Supreme Court, Orange Comity, dated July 26, 2006, and a judgment of the same court entered August 15, 2006, which were determined by decision and order of this court dated October 9, 2007, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is
ORDERED that the motion is denied, with $100 costs.

SCHMIDT, J.P., SANTUCCI, FLORIO and DILLON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court

At an IAS Part of the SUPREME Court held in the County of Orange, at the County Government Center thereof, Village of Goshen, New York, on the 26th day of July, 2006

PRESENT: HON. JOSEPH G. OWEN
J.S.C.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORANGE

----------X

AAMES FUNDING CORPORATION D/B/A
AAMES HOME LOAN
C/O Americas Servicing Company
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff,

vs.

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,

Defendant(s).

----------X

On the Summons, Complaint and Notice of Pendency duly filed in this action on the 20th day of January, 2005, and all proceedings thereon, and on reading and filing the Affirmation of Regularity of Steven J. Baum, P.C. by Kevin Kane, Esq., dated the 14th day of April, 2005, showing that each of the Defendants herein have been duly served with the

Summons and Complaint in this action, or have voluntarily appeared by their respective attorneys, and stating that more than the legally required number of days had elapsed since and Defendant were so served and/or appeared; and that non of the Defendants had served any answer to said Complaint, except for the defendants, LEONARD W. HOUSTON and LUCILLE HOUSTON, whose Answers were dismissed and Summary Judgment granted in favor of the plaintiff on the 11th day of May, 2005, nor had their time to do so extended; and that the Complaint herein and due Notice of Pendency of this action containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of ORANGE on the 20th day of January , 2005, and an Order of Reference having been duly executed wherein a Referee was appointed to compute the amount due to the Plaintiff upon the bond/note and mortgage set forth in the Complaint and said Referee having examined and reported whether the Mortgaged Premises can be sold in parcels.

AND, on reading and filing the report of PETER G. BOTTTI, ESQ., the Referee named in said Order of Reference, by which Report, bearing date the 17th day of May, 2006, it appears that the sum of $168,770.66 was due thereon at the date of said Report and that the Mortgaged Premises cannot be sold in parcels.

THAT defendant, LEONARD W. HOUSTON, filed a Chapter 13 Bankruptcy on the 1st day of August, 2005, in the Southern District of New York

under case number 05-37138, and attached hereto is a copy of the Order Terminating Automatic Stay, dated the 31st day of January, 2006, which allows the foreclosure to proceed.

THAT since the institution of this action the mortgage being foreclosed has been assigned from AAMES FUNDING CORPORATION D/B/A AAMES HOME LOAN TO US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CREDIT SUISSE FIRST BOSTON HEAT 2004-6. Attached hereto is a copy of said assignment, executed on the 4th day of June, 2004, which has been send to the Orange County Clerk's Office for recording.

THAT a previous application for Judgment of Foreclosure and Sale was sought on the 25th day of April, 2006, and but was withdrawn.

NOW, upon proof of due notice of this application upon all parties who had not waived the same,

ON MOTION of Steven J. Baum, P.C., attorney for the Plaintiff, it is

ORDERED, that the legal description in the mortgage is hereby reformed so that the property description reads as follows:

Section 63, Block 1 and Lot 1-26

THE Unit known as Residential Unit No. 148 (hereafter called the "Unit") located at

Deer Court, in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit NO. 148 in the Declaration comprising Deer Run, mad by Dee Run Corp.., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County, Division of Land Records, on the 4th day of June 1989, in Liber 3145 of Conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the Floor Plans of the Building, prepared and certified by Barry Poskanzer, AIA, Architect, on the 15th day of June 1988 and filed simultaneously with said Declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No 9543.

THE land area of the property and the location of the building in which the aforesaid Unit is located are known on a certain map entitled, "Site Plan Deer Run" prepared by Chumard and McEvilly, Engineers and filed in the Office of the Clerk of Orange County, Division of Land Records, on the 14th day of June 1989 as Map No. 9541.

TOGETHER with an undivided .4960 percent interest in the Common Elements of the Property described in said Declaration (hereinafter called "Common Elements").

Premises known as 148 Deer Court, Middletown, New York

and it is further

ORDERED, ADJUDGED AND DECREED, that the action be amended to reflect that the Plaintiff is now US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CREDIT SUISSE FIRST BOSTON HEAT 2004-6; and it is further

ORDERED, ADJUDGED AND DECREED, that the said Report of the said Referee be, and the same is hereby in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the Mortgaged Premises, and if not sold sooner, any and all personal property in which the Plaintiff has a security interest, as described in the Complaint in this action or such part of the real property thereof as may be sufficient to discharge the mortgage debt, the expense of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold at public auction at the Orange County Government Center, Supreme Court Lobby, 255-275 Main Street, Village

of Goshen, in the County of ORANGE, State of New York, by and under the direction of PETER G. BOTTI, ESQ., who is hereby appointed Referee for that purpose; that the said Referee give public note of the time and place of such sale according to law and the practice of this Court, in an official publication, to wit: The Times Herald Record; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee at the time of sale may accept a written bid from the Plaintiff or the Plaintiff's attorneys, just as though the Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED, that the premises be sold in "as is" condition defined as the condition the premises are in as of the date of sale and continuing through the date of closing, and that said sale shall be subjected to:

(a) Rights of the public and others in and to any part of the Mortgage Premises that lies within the bounds of any street, alley, or highway; restrictions and easements of record;

(b) Any state of facts that an accurate, currently dated survey might disclose;

(c) Rights of tenants, occupants or squatters, if any. It shall be the responsibility of the Purchaser to evict or remove any parties in possession of Premises being foreclosed. There shall

be no pro-rata adjustment in favor of the purchaser for any rents that are paid for a period after the date of the foreclosure sale.

(d) The right of redemption of the United States of America, if any;

ORDERED, ADJUDGED AND DECREED, that the Plaintiff or any other parties to this action may become the purchaser or purchasers at such sale; that in the case the Plaintiff shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee conducting the sale shall pay out of the proceeds of sale all taxes, assessments and water rates which are liens upon the property at time of sale. Purchaser shall be responsible for interest due on any real property tax liens accruing after the first day of the month following the foreclosure sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee then take the remaining proceeds of sale and deposit them in his own name as Referee in his IOLA account or other separate account, and in addition to executing a deed to the purchaser(s) of the premises sold, shall thereafter make the following payments and his checks drawn for that purpose shall be paid by said depository:

FIRST: The statutory fees of said Referee for conducting the sale not to exceed $500.00.

SECOND: The expenses of the sale including posting and advertising.

THIRD: Said Referee shall also pay to the Plaintiff or its attorney the following:

Cost and Disbursements. $2180.00 adjudged to the Plaintiff for costs and disbursements in this action to be taxed by the clerk and inserted herein, with interest at the legal rate thereon from the date of entry hereof.

Additional Allowances. $0.00, is hereby awarded to the Plaintiff in addition to costs with interest at the legal rate thereon from the date hereof;

Amount Due per Referee's Report. $168,770.66, said amount so reported due as aforesaid together with the interest at the contract rate thereon from the date computed to in said Report until the date of entry of this judgment, with interest at the statutory rate thereon until the date of transfer of the Referee's deed, or so much of the purchase money as will the same, and that he take a receipt for said payment and file it with his report of sale.

Attorney Fees. $16,900.00 is hereby awarded to the Plaintiff as reasonable legal fees herein, with legal interest from the date of entry of the judgment.

Plaintiff, may, after entry of this judgment, add to the amount due any and all advances made by the Plaintiff for inspection fees, maintenance charges, taxes, insurance premiums or other advances necessary to preserve the property, whether or not said advances were made prior to oar after entry of judgment, so long as said charges were not included in the Referee's Report, and the Referee be provided with receipts for said expenditures, all together with interest thereon pursuant to the note and mortgage.

FOURTH: That in case the Plaintiff be the purchaser of said Mortgaged Premises at said sale, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff a Deed of the premises sold upon the payment to said Referee of the amounts specified above in items marked "First" and "Second"; That the balance of the amount bid, after deducting the amounts paid by the Plaintiff, for Referee's fees, and advertising expenses, shall be allowed to the Plaintiff and applied by said Referee upon the amounts due to the Plaintiff as specified above in item marked "Third"; that is after applying the balance off the amount bid, there shall be a surplus over and above said amounts due to the Plaintiff, the Plaintiff shall pay the same to said

Referee, who shall deposit the funds in accordance with paragraph "FIFTH" below.

FIFTH: That said Referee deposit the surplus money, if any, with Clerk of the Court within five days after the same shall be received and be ascertainable to the credit of this action, to be withdrawn only on the written order of the Court, that the said Referee make his Report of such sale under oath showing the disposition of the proceeds of the sale and file it with the Clerk of the County of ORANGE within thirty days after completing the sale and executing the proper conveyance to the purchaser and that if the proceeds of such sale be insufficient to pay the amount reported due the Plaintiff with interest and costs as aforesaid, the Plaintiff may recover of the Defendant, LEONARD W. HOUSTON, the whole deficiency or so much thereof as the Court may determine to be just and equitable of the mortgage debt remaining unsatisfied after the sale of the Mortgaged Premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within the time limited therein, and the amount thereof is determined and awarded by an order of this Court as provided for in said action, and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on producing the Referee's Deed; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the Defendants in this action and all persons claiming under them, or any or either of them, after the filing of such Notice of Pendency of this action, be and they hereby are, barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said Mortgaged Premises and each and every part thereof; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving appointment pursuant to provisions of that Rule, the Referee shall notify the Appointing Judge forthwith.

That a description of the said Mortgaged Premises hereinbefore mentioned, is annexed hereto as Schedule A – Legal Description.

Date: July 26, 2006
Goshen, NY

ENTER

HON. JOSEPH G. OWEN
Justice of the Supreme Court

Filed August 15, 2006
Shirley B Hadden
ACTING DEPUTY COUNTY CLERK

PRIME TITLE SEARCH, LLC.

Title No. PT-1668-05 (Loan No. 1205053531)

SCHEDULE A
DESCRIPTION

Section 63, Block 1 and Lot 1-26

THE Unit known as Residencial Unit NO. 148 (hereafter called the "Unit") located at Deer Court, in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the Declaration comprising Deer Run, made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County, Division of Land Records, on the 4th day of June 1989, in Liber 3145 of Conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the Floor Plans of the Building, prepared and certified by Barry Poskanzer, AIA, Architect, on the 15th day of June 1988 and filed simultaneously with said Declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map N. 9543.

THE land area of the Property and the location of the building in which the aforesaid Unit is located are known on a certain map entitled, "Site Plan Deer Run" prepared by Chumard and McEvilly, Engineers

and filed in the Office of the Clerk of Orange County, Division of Land Records, on the 14th day of June 1989 as Map No. 9541.

TOGETHER with an undivided .4960 percent interest in the Common Elements of the Property described in said Declaration (hereinafter called "Common Elements")

Premises known as 148 Deer Court, Middletown, New York.

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order with notice of entry upon all parties.

SUPREME COURT OF THE STATE
OF NEW YORK
COUNTY OF ORANGE

PRESENT:
HON. JOSEPH G. OWEN,
SUPREME COURT JUSTICE

----------x

AAMES FUNDING CORPORATION d/b/a AAMES HOME LOAN c/o America's Servicing Company 3476 Statewide Boulevard Ft. Mill SC 29715,

Plaintiff,

-against-

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,

Defendants.

----------x

Index No. 430/0
Motion Date: 2/21/06
Cal. No. 1

SHORT FORM ORDER

The following papers have been read, in this action to foreclose a mortgage lien on certain real

property situated in Middletown, New York, on defendant Leonard W. Houston's motion for an order pursuant to CPLR 5015(a)(3) vacating the Court's prior May 11, 2005 order, which granted plaintiff's application for summary judgment and appointed a referee to compute, on the grounds of fraud, misrepresentation and misconduct:

> Notice of Motion-Affidavit of Leonard W. Houston, sworn to February 3, 2006-Exhibits-Memorandum of Law
>
> Affirmation in Response of Kevin J. Kane, Esq., dated February 8, 2006-Exhibits
>
> Reply Affidavit of Leonard W. Houston, sworn to February 11, 2006

Upon the foregoing pagers, it is hereby ORDERED that the motion is denied.

The "fraud and misrepresentation" to which defendant Leonard W. Houston ("defendant") refers is the assignment of the underlying mortgage from plaintiff to an entity known as US Bank National Association. It appears from the papers that this assignment was not recorded until January 6, 2006, well after commencement of this action and granting of the challenged order. As plaintiff was the record owner of the mortgage throughout these proceedings, there is no jurisdictional defect. Moreover,

defendant neither alleges nor shows that underlying determinations regarding the validity of the mortgage and his default in payment were erroneous, or that he in any way relied upon the alleged misrepresentation to his detriment. Accordingly, the challenged order will not be vacated on the grounds of fraud or misrepresentation.[1]

In any event, defendant filed a notice of appeal from the challenged order on July 15, 2005. As defendant claims that the actual assignment of mortgage was made on June 4, 2004, the issue presently at bar should have been raised with this appeal.

So ordered.

ENTER

HON. JOSEPH G. OWEN
SUPREME COURT JUSTICE

Dated: February 22, 2006
Goshen, New York

[1] Plaintiff should, or course, seek an appropriate substitution of parties.

Aames Funding Corp. v Houston,
Index No. 430/05

APPEARANCES:

STEVEN J. BAUM, P.C.
Attorneys for Plaintiff
P.O. Box 1291
Buffalo, New York 14240-1291

LEONARD W. HOUSTON, *Pro Se*
148 Deer Court
Middletown, New York 10940-6867

COPIES TO:

PETER G. BOTTI, ESQ.
Referee
Court Plaza, P.O. Box 388
Goshen, New York 10924

JEFFREY L. SAPIR, ESQ.
Chapter 13 Trustee
United States Bankruptcy Court
Southern District of New York
399 Knollwood Road – Suite 102
White Plains, New York 10609-1900
(File No. 61772)

At a Special Term of the SUPREME Court of the County of ORANGE, held in the County Courthouse in the City of Goshen, New York, on the 11th day of May, 2005.

PRESIDING: HON. HON. JOSEPH G. OWEN
SUPREME COURT JUSTICE

_____
J.S.C.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORANGE

AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
C/O Americas Servicing Company
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff,

vs.

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,
JOHN DOE (Said name being fictitious, it being the intention of plaintiff to designate and all occupants of premises being foreclosed herein.)

Defendants.

Assigned Judge: Hon. Joseph G. Owen, J.S.C.
Index No. 430/05

Mortgaged Premises: 148 DEER COURT
MIDDLETOWN, NY 10940

ORDER

Upon reading Plaintiff's Affidavit of Roger L. Simpson, Jr., the Vice President of Loan Documentation of AMERICAS SERVICING COMPANY, as Servicer for AAMES FUNDING CORPORATION D/B/A AAMES HOME LOAN, dated the 21st day of March, 2005, and upon reading the Summons, Complaint, and Answer submitted by Defendant, LUCILLE HOUSTON, APPEARING *Pro Se*, and the Answer submitted by Defendant, LEONARD W. HOUSTON, appearing *Pro Se*, and after hearing STEVEN J. BAUM, P.C., Plaintiff's attorney in this action, in support of said motion, and after hearing defendants Leonard W. Houston and Lucille Houston in opposition thereto, it is hereby

ORDERED, that the Answer of Defendant, LUCILLE HOUSTON and the Answer of the Defendant, LEONARD W. HOUSTON, be and are hereby dismissed and that summary judgment be and is hereby granted in favor of Plaintiff, AMERICAS SERVICING COMPANY, as Servicer for AAMES FUNDING CORPORATION D/B/A AAMES HOME LOAN; and it is further

ORDERED, that the Answers of Defendant, LUCILLE HOUSTON and LEONARD W. HOUSTON be treated as a Limited Notice of Appearance entitling said defendants to receive, without prior notice, copies of the Notice of Sale, Notice of Discontinuance, and Notice of Surplus Money Proceedings, if any, and it is further

ORDERED, that John Doe be dropped as a party Defendant and that the caption of this action be amended to reflect said deletion; and it is further

ORDERED, that the caption read as follows:

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORANGE

Index No 430/05

AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
C/O AMERICAS SERVICING COMPANY
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff

vs.

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,

Defendants.

---

and it is further

ORDERED, that Peter G. Botti, Esq of Goshen N.Y., be appointed Referee in this forclosure action to determine the amount due and to determine whether of not the premises can be sold in parcels, and it is further

ORDERED, that the referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the referee shall notify the Appointing Judge forthwith, and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served upon the owner of the equity of redemption, any tenants named in this action and any other party entitled to notice.

Dated: May 11, 2005
Goshen, NY

J.S.C.

HON. JOSEPH Q. OWEN
SUPREME COURT JUSTICE

ENTER.

LOCATION MAP
File No. 1213
213
Case No.
State: NY

To commence the statutory time period of appeals as of right CPLR 5513[a]), you are advised to serve a copy of this order with notice of entry upon all parties.

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF ORANGE

PRESENT:
HON. JOSEPH G. OWEN,
SUPREME COURT JUSTICE

AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
[illegible] Americas Servicing Company
3476 Statewide Boulevard
Ft. Mill SC 29715,

Plaintiff,

-against-

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,

Defendants.

Index No. 430/05 Cal. No. 1
Motion Date: 5/09/05

SHORT FORM ORDER

The following papers have been read, in this action to foreclose a mortgage lien on certain real

property located in Middletown, New York, on (i) plaintiff's motion for an order pursuant to CPLR 3211 and 3212 granting summary judgment in its favor and dismissing defendants' *pro se* answers; and (ii) defendant Leonard W. Houston's cross motion to preclude:

Notice of Motion-Affidavit of Roger L. Simpson, Jr., sworn to March 21, 2005-Exhibits

Affidavit in Opposition to Lucille Houston, sworn to April 25, 2005

Affidavit in Support of Summary Judgment Motion of Kevin J. Kane, Esq., sworn to May 5, 2005-Exhibits

Affidavit in Opposition of Leonard W. Houston, sworn to April 24, 2005

Notice of Cross Motion-Affidavit of Leonard W. Houston, sworn to April 24, 2005

Affidavit in Support of Summary Judgment Motion of Kevin J. Kane, Esq., sworn to May 6, 2005

Upon the forgoing papers, it is hereby ORDERED that the motion is granted.

Order of Reference signed herewith.

Plaintiff has established a prime facie case of entitlement to judgment in its favor (see, *Barclay's Bank of New York, N.A. v. Smitty's Ranch, Inc.*, 122 AD2d 323, 324), shifting to defendants the burden of showing the existence of a genuine and substantial issue (*see, Marine Midland Bank, N.A. v. Brown*, 115 AD2d 523, 524). Defendant have failed to meet this burden.

Defendant Lucille Houston argues, in essence, that plaintiff unlawfully discriminated against her in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691, *et seq.*) by not adding her name as a mortgagor, notwithstanding the facts that the deed into her was not executed until after the pertinent mortgage application, and that defendant Leonard Houston was the sole applicant. Defendant cites no authority for this unique legal proposition, nor does she show that the otherwise enforceable mortgage documents may be collaterally attacked in such a fashion.

Defendant Leonard W. Houston's claims regarding the facial validity of the initiatory papers are without merit. To the extent that he attempts to challenge service of process, defendant fails to rebut the statements made in the process server's affidavit (*see, Simonds v. Grobman*, 277 AD2d 369, 370).

Given the holding herein, defendant Leonard Houston's cross motion is moot.

So ordered.

ENTER

s/
HON. JOSEPH G. OWEN
SUPREME COURT JUSTICE

Dated: May 11, 2005
Goshen, New York

APPEARANCES:

STEVEN J. BAUM, P.C.
Attorneys for Plaintiff
P.O. Box 1291
Buffalo, New York 14240-1291

LEONARD HOUSTON, *Pro Se*
#04A5023
Groveland Correctional Facility
7000 Sonyea Road
Sonyea, New York 14556

LUCILLE HOUSTON, *Pro Se*
148 Deer Court Drive
Middletown, New York 10940

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

TYPE IN BLACK INK:
NAME(S) OF PARTY(IES) TO DOCUMENT

Homes Funding Corp d/b/a
Homes Home

TO
US Bank National Assoc
as TTEE
Credit Suisse First Boston

SECTION 63 BLOCK 1 LOT 126

RECORD AND RETURN TO:

Homes Funding Corporation
350 South Grand Ave
Los Angeles, CA 90071
Attn: Collateral Control

THIS IS PAGE ONE OF THE RECORDING

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH RECORDED INSTRUMENT ONLY

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED ___ MORTGAGE ___ SATISFACTION ___ ASSIGNMENT X ___ OTHER ___

PROPERTY LOCATION

- BLOOMING GROVE (TN)
- CHESTER (TN)
- CRAWFORD (TN)
- DEERPARK (TN)
- GOSHEN (TN)
- GOSHEN (VLG)
- FLORIDA (VLG)
- GREENVILLE (TN)
- HAMPTONBURGH (TN)
- HIGHLANDS (TN)
- MINISINK (TN)
- MONROE (TN)
- MONTGOMERY (TN)
- MAYBROOK (VLG)
- MONTGOMERY (VLG)
- WALDEN (VLG)
- MOUNT HOPE (TN)
- NEWBURGH (TN)
- NEW WINDSOR (TN)
- TUXEDO (TN)
- TUXEDO PARK (VLG)
- WALLKILL (TN)
- WARWICK (TN)
- FLORIDA (VLG)
- WAWAYANDA (TN)
- WOODBURY (TN)
- HARRIMAN (VLG)

CITIES
- MIDDLETOWN
- NEWBURGH
- PORT JERVIS

- KIRYAS JOEL (VLG)
- HOLD

DONNA L. BENSON
ORANGE COUNTY CLERK

RECEIVED FROM: Lawyers Title

MORTGAGE 5 CROSS REF. 1
CERT. COPY ___ ADDL. MTG. ___
PAGES ___ FEE ___
PAYMENT TYPE: CHECK ✓ CASH ___ CHARGE ___ NO FEE ___

Taxable CONSIDERATION $ ___
TAX EXEMPT ___
Taxable MORTGAGE AMT. $ ___
DATE ___

MORTGAGE TAX TYPE:
- (A) 1 OR 2 FAMILY
- (C) UNDER $10,000
- (D) EXEMPT
- (F) 3 TO 6 UNITS
- (G) NOT FORECLOSURE UNDER
- (H) MANSION, 1 OF 2
- (I) CONDO

RECORDED/FILED
01/04/2002 10:01:19
DONNA L. BENSON
County Clerk
ORANGE COUNTY, NY

RECEIPT # 20020002111
BOOK / RT LIBER 5043 PG 0531
RECORDING FEES 40.00
Receipt#328133 Joanned

WHEN RECORDED MAIL TO:

AAMES FUNDING CORPORATION
350 South Grand Avenue
Los Angeles, CA 90071
Attn: Collateral Control
1205053531

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS That Aames Funding Corporation DBA Aames Home Loan whose address is 350 South Grand Avenue, 42nd Floor, Los Angeles, CA as Mortgagee under that certain MORTGAGE executed by Leonard W. Houston, sole property whose address is 148 DEER COURT, MIDDLETOWN, NY 10940

As mortgage on the 29th day of May, 2004 and recorded on the 6th day of June, 2004 in book 11523 of _____ at page 1961 under filing No._____ of the Records of ORANGE County, State of New York, given to secure the payment of a promissory not for the sum of One Hundred Forty Four Thousand and No/100 Dollars (144,000.00) and interest, has endorsed said note and does hereby ASSIGN AND TRANSFER to US Bank National Association, as trustee for Credit Suisse First Boston HEAT 2004-6,
All right, title and interest in said note and all rights accrued under said Mortgage and all indebtedness secured thereby. The said Mortgage described herein affects the premises commonly known and designated as:

"The rider attached hereto is a part of the assignment"

Property Address: 148 Deer Court, Middletown, NY
Section 63
Block 1
Lot 126
This assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

IN WITNESS WHEREOF said Aames Funding Corporation DBA Aames Home Loan has caused this instrument to be signed by its Assistant Secretary and attested by its corporate seal this

16th day of June A.D. 2004

By: _____
Lisa [illegible], Assistant Secretary

By: _____

DOC 0:312401 APPL 0:0001004215
New York Assignment of Mortgage 900
[illegible]
[illegible]

Legal Description Continued

Borrowers: LEONARD W. HOUSTON

Property Address: 148 DEER COURT
MIDDLETOWN, NY 10940

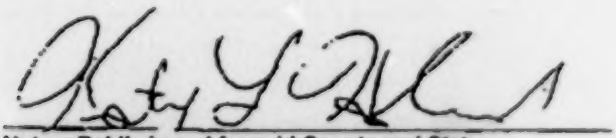
The unit known as Residential Unit No 148 (hereinafter called the "Unit") located in Deer Court, in the City of Middletown. County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the declaration comprising Deer Run made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York) dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County Division of Land Records, on the 4th day of June 1989, in Liber 3145 of conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the floor plans of the building, prepared and certified by Barry Poskauzer, AIA, Architect, on the 15th day of June, 1988 and filed simultaneously with said declaration in the office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

Loan Number: 0001004225

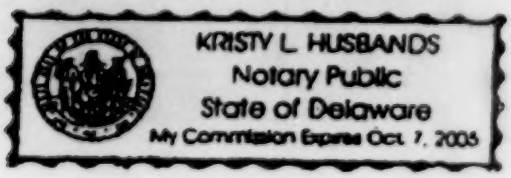
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On June 4, 2004, before me, Kristy L. Husbands a Notary Public, in and for State of Delaware, County of New Castle, said County and State, personally appeared Lisa Straton and Nicholas Carbonara personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) of the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal



Notary Public in and for said County and State



PRIME TITLE SEARCH, LLC.

Title No. PT-1668-05 (Loan No. 1205053531)

SCHEDULE A
DESCRIPTION

Section 63, Block 1 and Lot 1.26

THE Unit known as Residential Unit No. 148 (hereafter called the "Unit") located at Deer Court in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the Declaration comprising Deer Run, made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County, Division of Land Records, on the 4th day of June 1989, in Liber 3145 of Conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1.1.26 on the Floor Plans of the Building, prepared and certified by Barry Poskanzer, AIA , Architect, on the 15th day of June 1988 and filed simultaneously with said Declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

THE land area of the Property and the location of the building in which the aforesaid Unit is located are known on a certain map entitled, "Site Plan

Deer Run" prepared by Chumard and McEvilly, Engineers and filed in the Office of the Clerk of Orange County, Division of Land Records, on the 14th day of June 1989 as Map No. 9541.

TOGETHER with an undivided .4960 percent interest in the Common Elements of the Property described in said Declaration (hereinafter called "Common Elements").

Premises known as 148 Deer Court, Middletown, New York.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORANGE

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AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
C/O AMERICAS SERVICING COMPANY
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff,

vs.

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM,

JOHN DOE (Said name being fictitious, it being the intention of plaintiff to designate any and all occupants of premises being foreclosed herein.)

Defendants.

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SUMMONS

Index No.: 430/05

Original filed with the Clerk on 1/20/05

Mortgaged Premises:
148 DEER COURT
MIDDLETOWN, NY 10940

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in the above entitled action and to serve a copy of your Answer on the plaintiff attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. The United States of America, if designated as a defendant in this action, may answer or appear within sixty (60) days of service hereof. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

ORANGE County is designated as the place of trial. The basis of venue is the location of the mortgaged premises.

DATED: January 18, 2005

Steven J. Baum, P.C.
Attorney for Plaintiff
220 Northpointe Parkway,
Suite G
Amherst, NY 14228
Tel: (716) 204-2400

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORANGE

---x

AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
C/O AMERICAS SERVICING COMPANY
3476 Stateview Boulevard
Ft. Mill, SC 29715

Plaintiff,

vs.

LEONARD W. HOUSTON, LUCILLE HOUSTON, BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM, JOHN DOE (Said name being fictitious, it being the intention of plaintiff to designate any and all occupants of premises being foreclosed herein.)

Defendants.

---x

Index No. 430/05

COMPLAINT

The plaintiff herein, by Steven J. Baum, P.C., its attorney, complains of the defendants above named, and for its cause of action, alleges:

AS AND FOR A FIRST CAUSE OF ACTION, PLAINTIFF HEREIN ALLEGES:

FIRST: That the Plaintiff herein is, and at all times hereinafter mentioned was AAMES FUNDING CORPORATION D/B/A AAMES HOME

LOAN, a banking corporation organized and existing under and by virtue of the law of the state of Delaware, with an address in C/O Americas Servicing Company, 3476 Stateview Boulevard, Ft. Mill, SC. That the plaintiff is the holder of a mortgage bearing date the 29th day of May, 2004 executed by LEONARD W. HOUSTON to secure the sum of $144,000.00, and recorded at Liber 11523 of Mortgages at Page 1961 in the Office of the Clerk of the County of ORANGE, on the 9th day of June, 2004;

SECOND: Upon information and belief, that at al times hereinafter mentioned, the defendant(s) set forth in "Schedule A-Defendants" are made defendants in this action in the capacities therein alleged and for the reasons set forth in said Schedule.

THIRD: That the United States of America, The People of the State of New York, The State Tax Commission of the State of New York, the Industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the Federal, State or local government (however designated), are made parties solely by reason of the facts set forth in "Schedule B".

FOURTH: That heretofore the defendants named in "Schedule C" ("Schedule C" being a copy of the bond or note, or if note cannot be located, a summary of the terms of the note, or an accurate reference to the assumption agreement, evidencing the indebtedness to plaintiff), for the purpose of

securing to plaintiff, its successor and assigns, a sum of money, duly executed and acknowledged a certain bond or note whereby they bound themselves, their successors or their heirs, executors, administrators and assigns, and each and every one of them, jointly and severally, in the amount of said sum of money, all as more fully appears together with the terms of repayment of said sum and rights of the plaintiff in "Schedule C".

FIFTH: That as security for the payment of said indebtedness, a mortgage was executed ("Schedule D" being a copy of said mortgage[s]), acknowledged and delivered to the plaintiff or its assignor, whereby the mortgagor or mortgagors therein named executed their mortgage to the mortgagee named therein, its successors and assigns, the premises more particularly described therein (hereinafter called "mortgaged premises"), under certain conditions with rights, duties and privileges between or among them as more fully appears in said mortgage.

SIXTH: That the said mortgage was duly recorded (and the mortgage tax due thereon was duly paid) in the proper County Clerk's Office at the place and time which appears thereon.

SEVENTH: that the Defendant(s) LEONARD W. HOUSTON so named, have/has failed and neglected to comply with the conditions or said mortgage, bond or note by omitting and failing to pay items of principal and interest or taxes, assessments, water rates, insurance premiums,

escrow and/or other charges, all as more fully appears in "Schedule E" and accordingly the plaintiff hereby elects to call due the entire amount secured by the mortgage described in paragraph "FIFTH" hereof.

EIGHTH: That "Schedule E" set forth the principal balance due and the date (and rate) from which interest accrued and all other items and charges arising from said default which are now due.

NINTH: That in order to protect its security, the Plaintiff has paid, if set forth in "Schedule E", or may be compelled to pay during the pendency of this action to pay local, taxes, assessments, water rates, insurance premium and other charges affecting the mortgaged premises, and the plaintiff requests atht any sums thus paid by it for said purposes (together with interest thereon), should be added to the sum otherwise due and be deemed secured by the said mortgaged and be adjudged a valid lien on the mortgaged premises.

TENTH: That all the defendants herein have, or claim to have, some interest in, or lien upon said mortgaged premises or some part thereof, which interest or lien, if any, has accrued subsequent to the lien of plaintiff's mortgage.

ELEVENTH: That the plaintiff is now the sole, true and lawful owner of the said bond/note and mortgage securing the same and there are no pending proceedings at law or otherwise to collect or enforce said bond/note and mortgage.

TWELFTH: That Schedules "A", "B", "C", "D", and "E" are expressly incorporated and made a part of the Complaint for all purposes with the same force and effect as if they were completely and fully set forth herein whenever reference has been made to each or any of them.

THIRTEENTH: That by reason of the foregoing, there is now due and owing to the plaintiff upon said bond or note, the amount set forth in "Schedule E".

FOURTEENTH: That if the security for the indebtedness consists of more than one parcel, plaintiff respectfully requests that the judgment of foreclosure provide for the sale of the parcels in a particular order to the extent necessary to satisfy the indebtedness.

AS AND FOR A SECOND CAUSE OF ACTION, PLAINTIFF HEREIN ALLEGES:

FIFTEENTH: Plaintiff repeats and realleges the allegations contained in Paragraphs "First" through "Fourteenth", as though fully set forth herein.

SIXTEENTH: That the legal description in the recorded mortgage that is the subject of this action contains an error, to wit: the legal description fails to recite the percentage of common elements.

SEVENTEENTH: That the deed recorded on June 1, 2004 in Liber 11514 Page 442 references the correct legal description for the property commonly known as 148 Deer Court, Middletown, New York.

EIGHTEENTH: Plaintiff hereby requests information of the said mortgage by Order of this Court as contained in a clause in the Judgment of Foreclosure stating the following:

ORDERED, that the legal description in the mortgage in hereby reformed so that the property description reads as follows:

THE Unit known as Residential Unit No. 148 (hereafter called the "Unit") located at Deer Court, in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the Declaration comprising Deer Run, made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County, Division of Land Records, on the 4th day of June 1989, in Liber 3145 of Conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the Floor Plans of the Building, prepared and certified by Barry Poskanzer, AIA, Architect, on the 15th day of June 1988 and filed simultaneously with said Declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

THE land area of the Property and the location of the building in which the aforesaid Unit is located are known on a certain map entitled, "Site Plan Deer Run" prepared by Chumard and McEvilly , Engineers and filed in the Office of the Clerk of Orange County, Division of Land Records, on the 14th day of June 1989 as Map No. 9541.

TOGETHER with an undivided .4960 percent in the Commons Elements of the Property described in said Declaration (hereinafter called "Common Elements").

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT:

1. Adjudging and decreeing the amounts due the plaintiff for principal, interest, costs and reasonable attorney's fees. (If provided for in the said mortgage)
2. That the defendants and all persons claiming by, through or under them, and every other person or entity whose right, title, conveyance or encumbrance is subsequent to or subsequently recorded, or whose lien is being challenged by being named in this action, may be barred and forever foreclosed of all right, claim, lien, interest or equity or redemption in and to said mortgaged premises.
3. That the said mortgaged premises, or such part thereof as may be necessary to raise the amounts due for principal, interest, costs, allowances and disbursements,

together with any monies advanced and paid, may be decreed to be sold according to law.

4. That out of the monies arising from the sale thereof, the plaintiff may be paid the amounts due on said bond/note and mortgage and any sum which may be paid by the plaintiff to protect the lien of plaintiff's mortgage as herein set forth, with interest upon said amounts fro the dates of the respective payments and advances thereof, the costs and expenses of this action, and reasonable attorney's fees, if provided for in said bond, or note or mortgage, so far as the amount of such money properly applicable thereto will pay the same.

5. That either or any of the parties to this action may become a purchaser upon such sale.

6. That this Court, if requested, forthwith appoint a Receiver of the rents and profits of said premises with the usual powers and duties.

7. That the defendants referred to in paragraph "SEVENTH" of this Complaint and any original or subsequent obligors so named in this action, may be adjudged to pay any deficiency that may remain after applying all of said monies so applicable thereto, unless the debt has been listed and discharged in a Bankruptcy petition or unless the Plaintiff is unable to produce a

copy of the note, in which case no deficiency judgment will be sought.

8. That plaintiff specifically reserves the right to share in any surplus monies arising from the sale of subject premises by virtue of its position as a judgment will be sought.

9. Plaintiff hereby requests reformation or the Mortgage as described in Paragraph "EIGHTEEN" herein. And

10. That the plaintiff may have such other or further relief, or both, in the premises as may be just and equitable.

Steven J. Baum, P.C.
Attorney for Plaintiff
220 Northpointe Parkway
Suite G
Amherst, New York 14228
(716) 204-2400

Schedule A – Defendants

LEONARD W. HOUSTON

Record owner and original mortgagor of premises being foreclosed herein by virtue of a deed dated June 1, 2004 and recorded June 1, 2004 in the Office of the ORANGE County Clerk at Liber 11514 of Deeds at Page 442 and the party liable for payment of Schedule "C" and "D" herein.

LUCILLE HOUSTON

Record owner of the premises being foreclosed herein by virtue of a deed dated June 1, 2004 and recorded June 1, 2004 in the Office of the ORANGE County Clerk at Liber 11514 of Deeds at Page 442.

BOARD OF MANAGERS OF THE DEER RUN CONDOMINIUM

Holder of a possible lien for any unpaid Condominium Common Charges.

JOHN DOE

Said name being fictitious, it being the intention of plaintiff to designate any and all occupants of premises being foreclosed herein.

Schedule B - Defendants

NONE

SCHEDULE "C"

AFTER DUE DILIGENCE, PLAINTIFF CANNOT LOCATE THE PROMISSORY NOTE REFERRED TO IN THE RECORDED MORTGAGE. THE BOOKS AND RECORDS OF THE PLAINTIFF VERIFY THE EXISTENCE OF A NOTE MADE BY
LEONARD W. HOUSTON
TO AAMES FUNDING CORPORATION dba AAMES HOME LOAN
DATED MAY 29, 2004, IN THE FACE AMOUNT OF $144,000.00 PAYABLE $1,282.90 PER MONTH COMMENCING JULY 1, 2004, SAID PAYMENT TO INCLUDE INTEREST AT THE RATE OF 10.180 % PER ANNUM MATURING ON THE 1ST DAY OFJULY, 2034.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

KEVIN J. KANE, being duly sworn, deposes and says:

That your deponent is the attorney for the plaintiff, having an office at 220 Northpointe Parkway, Amherst, New York, and that he has read the foregoing Summons and Complaint and knows the contents thereof; that the same is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters your deponent believes it to be true. Deponent further states that the grounds of his belief as to all matters in the Complaint not stated to be upon his knowledge are based upon the original note, mortgage and/or financial statements, together with correspondence.

That the reason this verification is made by your deponent instead of the Plaintiff is because the Plaintiff does not reside within the County of Erie, which is the County where your deponent has his office.

KEVIN J. KANE, ESQ.

Sworn to before me this
18th day of January 2005

Jennifer R. DeGroat
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 3-Mar-08

Schedule E

After giving full credit for all payments made, there is now due and owing the principal balance of $143,876.88 plus interest at the rate of 10.18% from 9/1/2004, plus late charges in the amount of $25.67, plus inspection fees and returned check fees together with monies advanced for taxes, insurance and maintenance of the premises, costs, disbursements, and reasonable attorney's fees, as permitted by the loan documents.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

KEVIN J. KANE, being duly sworn, deposes and says:

That your deponent is the attorney for the plaintiff, having an office at 220 Northpointe Parkway, Amherst, New York, and that he has read the foregoing Summons and Complaint and knows the contents thereof; that the same is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters your deponent believes it to be true. Deponent further states that the grounds of his belief as to all matters in the Complaint not stated to be upon his knowledge are based upon the original note, mortgage and/or financial statements, together with correspondence.

That the reason this verification is made by your deponent instead of the Plaintiff is because the Plaintiff does not reside within the County of Erie, which is the County where your deponent has his office.

KEVIN J. KANE, ESQ.

Sworn to before me this
18th day of January 2005

Jennifer R. DeGroat
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 2-15-08

KEVIN J. KANE, AN ATTORNEY AT LAW LICENSED TO PRACTICE IN THE STATE OF NEW YORK, AND THE ATTORNEY FOR THE PLAINTIFF IN THIS ACTION HEREBY CERTIFIES THAT, TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF, FORMED AFTER AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES, THE PRESENTATION OF THIS PLEADING, AFFIDAVIT, (OR MOTION IF APPLICABLE), OR THE CONTENTIONS CONTAINED HEREIN ARE NOT FRIVOLOOUS AS DEFINED IN 22 N.Y.C.R.R. 130-1.1 (c).